

Cannabis Business Tax

Frequently Asked Questions (FAQ's)

What cannabis business activities are subject to the tax?

Cannabis business activities include “any activity which entails the distribution, delivery, dispensing, exchanging, bartering or sale of non-medical Cannabis, including but not limited to, transporting, manufacturing, cultivating, compounding, converting, processing, preparing, storing, packaging, wholesale, or retail sales of Cannabis and any ancillary products in the City, whether or not carried on for gain or profit.” SDMC § 34.0103(b). All cannabis business activities are taxable, regardless of whether a cannabis business has received the necessary licenses and permits to operate in the City of San Diego.

What medical cannabis activities are excluded from the tax?

Only two types of activities qualify as medical marijuana activities excluded from the definition of taxable cannabis business: (1) Activities “authorized under Health and Safety Code section 11362.765;” and (2) Activities of “[m]edical marijuana consumer cooperatives” as permitted under the Municipal Code. SDMC § 34.0103(b).

(1) Activities “authorized under Health and Safety Code section 11362.765” include the sales of medical cannabis by a primary caregiver to a qualified patient “for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use cannabis under this article, or for payment for out-of-pocket expenses incurred in providing those services.” Health and Safety Code section 11362.765(d). Any sales of cannabis products – recreational or medical – for profit, or any sales to individuals who are not qualified patients or a primary caregiver, do not qualify as activities authorized under Health and Safety Code section 11362.765.

(2) Activities of “[m]edical marijuana consumer cooperatives” include the activities of those entities permitted under the Municipal Code and the Medical Marijuana Program Act (MMP) to cultivate, distribute and sell medical cannabis to qualified patients or primary caregivers. However, such cooperatives may only grow, distribute and sell medical marijuana on a not-for-profit basis to their members. Health and Safety Code § 11362.775. By definition, medical marijuana consumer cooperatives do not include any cannabis business that cultivates, distributes or sells cannabis for profit or sells cannabis products to individuals who are not qualified patients or primary caregivers.

What If I make a tax-exempt medical cannabis sale but do not retain the documentation to show the purchaser was a qualified patient or primary caregiver?

The sale will be taxable. If the Treasurer’s Office is unable to verify the status of a purchaser in a purported tax-exempt medical cannabis sale as a qualified patient or primary caregiver, the Treasurer’s Office will require the cannabis business to add this sale to their gross receipts.

The City of San Diego Business Tax Program is providing this information as general guidance on the City’s Cannabis Business Tax Ordinance. This information is provided as a public service and should not be construed or relied upon in any way as legal advice. Although we make every effort to correct any errors brought to our attention, please refer directly to the full text of the Ordinance:

<http://docs.sandiego.gov/municode/MuniCodeChapter03/Ch03Art04Division01.pdf>.

The Treasurer's Office highly recommends that cannabis businesses verify a purchaser's status as a qualified patient or primary caregiver. Unless the individual has a valid medical marijuana identification card, this should involve the following: (1) personal contact with the recommending physician, and (2) verification of the physician's identity. To verify a primary caregiver, you should contact the primary caregiver's qualified patient, as well as validate that patient's recommendation. Copies should be made of a qualified patient's physician's recommendation or Medical Marijuana ID Card and kept on file for no less than three years.

What is the City's tax rate for cannabis business activities?

Cannabis business activities are currently subject to a 5% gross receipts tax. The City Council may, in its discretion, at any time by ordinance increase the tax rate up to 15%.

Should I include state excise taxes and sales taxes to my gross receipts used to compute the City's Cannabis Business Tax?

No. For the purpose of the Cannabis Business Tax, gross receipts means the total amount actually received from all sales, excluding the items listed in SDMC 34.0103 (f). Taxes required by law to be included in or added to the purchase price and collected from the consumer or purchaser may excluded from gross receipts.

When are Cannabis Business Taxes due?

Cannabis Business Taxes are to be remitted monthly. Full payment must be made on or before the last day of the month for the previous month's activity. In the event the last day of the month falls on a weekend or recognized City holiday, a payment made on the next regular business day in which the Office of the City Treasurer is open to the public will be considered timely.

Are there penalties for non-payment?

Yes. A penalty of 25% of the amount of the tax owed plus interest of 1.5% will be assessed for taxes not paid by the due date. Unpaid taxes outstanding for a period exceeding one calendar month beyond the due date will be assessed an additional 25% penalty.

Failure to remit Cannabis Business Taxes to the City may also result in the revocation of state-issued licenses and permits, the revocation of the City-issued Conditional Use Permit (CUP) required to operate a cannabis business, and a lien on the real property of the cannabis business owner.

How do I submit my tax payment?

Cash payments must be made in person at Civic Center Plaza – 1200 Third Ave. Suite 100, San Diego, CA 92101. Cash deposits in excess of \$3,000 require an appointment by calling (619) 615-1580. Payments made by check can submitted in person or by mail to the address listed below. The [Cannabis Tax Remittance Form](#) must be included with all payments.

City of San Diego
Business Tax Program – Cannabis Tax
PO Box 122289
San Diego, CA 92112-2289

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Note that check payments remitted by mail shall be considered timely only if the postmark date is prior to midnight on the last day for remitting without penalty.

I do not have any taxable gross receipts for the month. Am I still required to submit Cannabis Tax Remittance Form?

Yes. All cannabis businesses must remit a completed Cannabis Tax Remittance form to the Office of the City Treasurer monthly, regardless of the amount of tax remitted.

Does the issuance of a Business Tax Certificate and payment of associated taxes give me authorization to operate a cannabis business?

No. A cannabis business must obtain Cannabis Business Tax Certificate, but the Cannabis Business Tax Certificate does not authorize a cannabis business to operate. In addition to any requirements imposed by the State of California, a cannabis business in San Diego must obtain a Marijuana Outlet Permit or Marijuana Production Facility Permit to operate in the City. Please visit the following website for permitting information <https://www.sandiego.gov/blog/marijuana-cultivation-testing-sales-and-delivery>. However, absence of proper authorization to engage in cannabis business activities does not shield you from being subject to the Cannabis Business Tax.

Do I need to provide documentation with my monthly remittance supporting my gross receipts?

No, documentation is not required when submitting your monthly remittance; however, as required by San Diego Municipal Code section 34.0124, all business records must be maintained by the Operator for a minimum of three years. All businesses are subject to audit by the City and must produce records necessary to determine the amount of tax due.

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